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Riverside Masonry LLC d/b/a C & R Masonry of Michigan and Kenneth Henderson. Case 7–CA–45027

January 29, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The General Counsel seeks summary judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by Kenneth Henderson (the Charging Party) on April 12, 2002, the General Counsel issued the complaint on September 12, 2002, against Riverside Masonry LLC d/b/a C & R Masonry of Michigan, the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the Act. The Respondent failed to file an answer.

On October 29, 2002, the General Counsel filed a Motion for Default Summary Judgment with the Board. On October 31, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated October 3, 2002, notified the Respondent that unless an answer was received by October 10, 2002, a motion for default summary judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Michigan corporation with an office and place of business at 12801 Auburn Road, Detroit, Michigan, has been engaged as a masonry contractor in the construction industry doing commercial and industrial construction. The Respondent maintains jobsites in the metropolitan Detroit, Michigan area, including jobsites captioned Heilman and Taft, the only jobsites involved in this proceeding.

During the calendar year ending December 31, 2001, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000, and at its various Michigan jobsites purchased and received goods valued in excess of \$50,000 directly from points outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We also find that Local 334, Laborers' International Union of North America, AFL–CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the Respondent, as a member of Mason Contractors Association, Inc., and the Union have maintained in effect and enforced a collective-bargaining agreement covering wages, hours, and other terms and conditions of employment of certain employees of the Respondent in the metropolitan Detroit, Michigan area.

On about November 14, 2001, the Charging Party claimed the right to start the workday at the same time as other laborers.

On about November 15, 2001, the Charging Party claimed the right to refuse to work, because of working conditions he reasonably believed to be dangerous.

The Charging Party's claims set forth above arise under the collective-bargaining agreement between the Respondent and the Union.

On about December 22, 2001, the Respondent terminated the employment of or laid off the Charging Party.

The Respondent terminated or laid off the Charging Party because he made the claims described above, because of his support for, activities, and sympathies on behalf of the Union, and to discourage employees from engaging in these or other protected concerted activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing its employees because of their protected concerted activities, and has been discriminating in regard to the hire or

tenure or terms or conditions of employment of its employees, thereby discouraging membership in labor organizations, and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) and (3) by terminating the employment of or laying off Kenneth Henderson, we shall order the Respondent to offer Henderson full reinstatement to his former job, or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed. In addition, we shall order the Respondent to make Henderson whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent also shall be required to expunge from its files all references to Henderson's unlawful termination or layoff, and to notify him in writing that this has been done and that his termination or layoff will not be used against him in any way.

ORDER

The National Labor Relations Board orders that the Respondent, Riverside Masonry LLC d/b/a C & R Masonry of Michigan, Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Terminating or laying off its employees because they make claims arising under the collective-bargaining agreement, because of their support for, and activities and sympathies on behalf of, the Union, or to discourage employees from engaging in these or other protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Kenneth Henderson full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent

position, without prejudice to his seniority or other rights and privileges previously enjoyed.

(b) Make whole Kenneth Henderson for any loss of earnings and other benefits suffered as a result of his unlawful termination or layoff, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, expunge from its files all references to the unlawful termination or layoff of Kenneth Henderson, and within 3 days thereafter, notify him in writing that this has been done and that his termination or layoff will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 22, 2001.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., January 29, 2003

¹If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Robert J. Battista,	Chairman
Wilma B. Liebman,	Member
Peter C. Schaumber,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist any union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT terminate or lay off our employees because they reasonably make claims arising under the collective-bargaining agreement, because of their support for, and activities and sympathies on behalf of, the Union, or to discourage employees from engaging in these or other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Kenneth Henderson full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed.

WE WILL make whole Kenneth Henderson for any loss of earnings and other benefits suffered as a result of his unlawful termination or layoff, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful termination or layoff of Kenneth Henderson, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that his termination or layoff will not be used against him in any way.

RIVERSIDE MASONRY LLC D/B/A C & R
MASONRY OF MICHIGAN